UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,625	06/14/2006	Richard Rudolf Theodoor Van Den Brink	Q93287	2743

23373 7590 11/02/2009

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER	
RAHMJOO, MANUCHER	
ART UNIT	PAPER NUMBER
2624	
MAIL DATE	DELIVERY MODE
11/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/568,625	VAN DEN BRINK, RICHARD RUDOLF THEODOOR	
	Examiner	Art Unit	
	MIKE RAHMJOO	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1- 51* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9, 15- 17, 26- 34, 40- 42 and 51* is/are rejected.

7)☒ Claim(s) *10- 14, 18- 25, 35- 39, 43-50* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date ____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

As per claim 42, applicant recites "...said camera for storing its scan in mirror image". [0044] of the specification teaches "A camera 2 and a mirror 16 interacting with it are present. This camera is provided with one or two light sources". [0048] of the specification teaches "According to the invention, a bottom light source 16 is present, by means of which light reaches the camera through the pack, so that the camera can also observe the underside of the pack. This makes it possible to scan the patient data by means of camera 2. The mirror image obtained in this way may be reversed electronically if desired". Examiner fails to see any teaching of said recited portion including "camera for storing" as claimed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

All claims intrinsic with the coordinating conjunction "for", linking verb "to be", and the phrases "configured to" or "capable of" usually render the following element non-assertive or more simply passive. In others words that which follows "for", "to be", "adapted to", "configured to" and or "capable of" usually does not take place and is merely an intended use, thus non-functional and therefore most likely without patentable weight.

In general claim language with "for" usually only suggests intended use and adds no further limitation to the claims.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

(A) statements of intended use or field of use,

(B) "adapted to" or "adapted for" clauses,

(C) "wherein" clauses, or

(D) "whereby" clauses.

This list of examples is not intended to be exhaustive. See also MPEP § 2111.04.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1- 9, 15- 16, 26- 34, 40- 41, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sleep et al (US PAP 2002/ 0099467), hereinafter, Sleep in view of Rast (US PAP 2003/ 0200726).

As per claims 1, 15- 16, 26, and 40- 41 Sleep teaches the infeed (system of fig. 1 including *RF means 46* or radio frequency information tags carrying customer and tablet information) of patient and drug data see [0052]. [0052] also teaches infeed of bottles 10 (implicitly corresponding to the string of packs) on conveyor belt (corresponding to the conveyance means). [0051] teaches said RF tags known as radio frequency (RF) tags are used as the data carrying elements 46; such RF tags may be queried and written to(*input and output of data* and means of doing it) without physical contact, and include a data storage device thereon, such as a memory chip, a magnetic recording device, or the like;

conveying (system of fig. 1 including conveyor belt used for conveying) said drugs past a camera (corresponding to the scanning means via camera) see [0053];

optical scanning said drugs by a camera(corresponding to the scanning via camera) see [0053];

a discharge for said string of packs (implicitly taught via system of fig. 1 including output bottles 47, said discharge being in close proximity to infeed which is in the same distribution loop) see [0063];

comparing said scanned drugs with said infeed (system of fig. 1 including station 40 as comparing means to compare the RF tag which includes the tablet and patient information with the barcode printed on the label) see [0063];

accepting or rejecting said drugs (corresponding to the discarding or proceeding to the shipping the tablets in bottles) see [0063] and also the flow chart of fig. 5 ;

storing data (made possible via RF tag 46 as storage means) relating to said drugs in a memory and for providing proof of the state of each pack at the time of the inspection (system of fig.1 including control FCS 14, flex filler 26 fills the bottles with the correct number of inspected tablets, and simultaneously writes the customer specific data to the RF tag 46, as illustrated in the flowchart of FIG. 10; said correct number of the inspected tablets corresponding to a proof of the state of each pack) see [0052].

However, Sleep does not explicitly teach an infeed and a discharge of string of pack. Sleep does not also teach inspecting several groups of drugs; wherein each group is provided in a pack and a number of packs is connected to provide a string, wherein each string is provided with patient data, said camera inspecting said packs and the group of drugs therein, wherein the scanned image of the patient data and packs having the group of drugs therein, is entered in said memory.

Rast teaches an infeed and a discharge of packs (corresponding pill repository and packetizer system 28 and boxing and delivery blocks 34- 36 of fig. 1 respectively);

Rast teaches inspecting several groups of drugs (corresponding to the configuration of individualized packets with information such as the name, address, date and time and other precautions for use which is made possible via inspections made) see [0075]. [0116] also teaches of checking (i.e., inspection) of the drug information;

wherein each group is provided in a pack and a number of packs is connected to provide a string (corresponding to the string of individualized packets 32a- z) see fig.1 and [0075],

wherein each string is provided with patient data, said camera inspecting said packs and the group of drugs therein(corresponding to the string of individualized packets 32a- z which have the patient information along with bar code or machine readable mechanism for scanning of the packs in the string) see fig. 1- 2 and [0077]. [0116] also teaches a camera used for scanning the individual packages and each dose with information of each pill therein,

wherein the scanned image of the patient data and packs having the group of 3drugs therein, is entered in said memory (corresponding to the retaining/ registering of the imaged and scanned information which includes RFID) see [0116]. Claim 22 also teaches saving information within a set of consumer information (corresponding to the patient and package dose information which is saved).

It would have been made obvious to one of ordinary skilled in the art at the time the invention was made to incorporate the teachings of Rast into Sleep to provide an interface, such as a web site on the World Wide Web (Internet), for allowing a consumer, or institution, to generate an order for individualized doses of supplements and/or medications which may be fulfilled by a packetizing system wherein the packets are marked, or labeled, with a textual and/or graphic indicia which preferably contains the patient's name and the scheduled date and time at which the MS dose is to be utilized so that the consumer establishes a dosing schedule into which is entered a custom array of medications and/or supplements (MS) from a database associated with a pill repository, therefore the consumer, or institution, is thereby no longer burdened by the maintenance of a miniature pharmacy while numerous concomitant safety and convenience features are provided, adding to the reliability, convenience and cost effectiveness to such system as well as the consumer see for example [0014- 15].

As per claims 2 and 27, Sleep teaches said drug scan comprises the number of drugs (corresponding to image differentiation, optical identification used by flex filler 26 for counting and other inspection tasks; spectroscopy is also used) see [0069]. [0049] also teaches the flex filler 26 counting the correct number of tablet which is optically performed.

As per claims 3 and28, Sleep teaches said drug scans comprise the shape and/or color of said drugs (corresponding to the flex filler inspection of size, color and shape) see [0049].

As per claims 4 and 29, Sleep teaches both the number of drugs and the shape thereof are used for comparing (corresponding to the post labeling verification station 40 which is in communication with flex filler 26 and verifies the labels, by comparing the printed barcode on the bottle with the information stored on the puck which comprises count, color size and shape) see [0049].

As per claims 5 and 30, Sleep teaches said acceptance/ rejection comprises the application of a color marking (corresponding to the labeler 38 which is used for application of labels to the bottles and rejects the bottles which lack correct data as a result of POI (print quality inspection) and OCV(optical character verification) which are check measure for correct data on labels which include color) see [0049].

As per claims 6 and 31, Sleep teaches said patient data are provided on each pack (corresponding to patient specific variable data field such as patient first name, last name and address) see [0329].

As per claims 7, 32 and 51, Sleep teaches before the scanning of said drugs they are subjected to a treatment for spreading them out (corresponding to vibratory feeders) see [0058].

As per claims 8 and 33, Sleep teaches vibrating (corresponding to vibratory feeders which perform the vibration of the tablets) see [0058].

Claims 9 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over modified Sleep further in view of Siegel et al (US PAP 2002/ 0153056), hereinafter, Siegel.

As per claims 9 and 34, the modified device of Sleep does not teach moving with a brush over said Pack.

However, Siegel teaches moving with a brush over said Pack (corresponding to brushes 42 and 44 which are used for manipulation of the pharmaceuticals into the openings) see fig.3 and [0022].

It would have been made obvious to one of ordinary skilled in the art at the time the invention was made to incorporate the teachings of Siegel into modified Sleep to provide an automated pharmaceutical product packaging machine with a product package filling guide to fill a product package with desired solid pharmaceuticals, thus offering a machine which selectively deposits a desired number of solid pharmaceuticals into the corresponding cavities or openings of a product package filling guide mechanism and therefore offer reliability and precision via an automated state of the art machinery see [0007].

Claims 17 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over modified Sleep further in view of Kamewada (US Patent 5543972).

As per claims 17 and 42, the modified device of Sleep does not teach camera being configured to scan/ store in a mirror image.

However, as best understood by examiner, Kamewada teaches camera configured to scan in a mirror image (corresponding to camera 36, or a magnified image of the face of the plane mirror 15 is photographed by means of the intervening

zoom lens 118, this picture of the hole wall is *scanned linearly and stored* in the photographed picture memory) see column 13 lines 15- 22.

It would have been made obvious to one of ordinary skilled in the art at the time the invention was made to incorporate the teachings of Kamewada into modified Sleep to provide scanning of photographed images of the plane of mirror and storing of said scanned image thereafter, thus making the unit development picture at a certain point of depth and detail by combining the unit development pictures obtainable for every fixed distance of movement and therefore obtaining very fine and detailed geological phenomena in the form of continuous pictures or series of images which adds to the efficiency of the device by making it an state of art technology see column 13 lines 22- 27.

Allowable Subject Matter

Claims 10- 14, 18- 25, 35- 39 and 43- 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9/16/09 have been fully considered but they are not persuasive.

In response to applicant's remarks on page 15, wherein applicant argues "Sleep doesn't disclose to verify if the correct drugs are actually present in the bottles, packs, strings" and "Sleep doesn't provide a verification that the actual content of the bottle is as it should be" and "Furthermore, claim 1 mentions *each string is provided with patent*

data, said camera inspecting said packs and groups of drugs therein", examiner points out that examiner fails to see the underlined portions as claimed in claim 1. In fact there is no claimed verification of any nature with any actual or virtual content inside any "bottle" as argued. As to the second underlined portion examiner believes there is a typing error and it is patient data as opposed to patent data.

In response to applicant's remarks on page 15, wherein applicant argues "it is clear from Sleep… and not after being filled as is the case in claim 1. Also, the customer specific data or patient data is not already present on the bottles, pack or strings at the time of performing the inspection, but only after the inspection", examiner fails to see said underlined portions as being claimed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the underlined portions above which are argued by applicant and are underlined above) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's remarks on page 16, wherein applicant argues "paragraph [0052]… this paragraph relates to storing customer specific data to a RF tag comprised by the puck carrying the bottle to be filled…this is a different kind of memory and a different kind of data than claimed" and points to paragraph [0009] of the application, examiner points out that examiner is entitled to the broadest reasonable interpretation and would suggest incorporating limitations used from the specification of

the current application to distinguish over the prior art(s). Examiner would point out that limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's remarks on page 16, wherein applicant argues another feature of claim 1 which does not appear as claimed (i.e., during optical scanning, the group of drugs are provided in a pack), examiner fails to see the features which are argued as being claimed. The optical scanning step of claim 1 is merely recited as "optical scanning said drugs by a camera" and nothing further. Furthermore, the feature argued as being absent from Rast is rejected via different portions of the record.

Rast teaches each string is provided with patient data (as admitted by applicant on page 16), said camera inspecting said packs and the group of drugs therein(corresponding to the string of individualized packets 32a- z which have the patient information along with bar code or machine readable mechanism for scanning of the packs in the string) see fig. 1- 2 and [0077]. [0116], on the other hand, is used to teaches a camera used for scanning the individual packages and each dose with information of each pill therein. Claim 22 also is used to teach saving information within a set of consumer information (corresponding to the patient and package dose information which is saved).

In response to applicant's argument on page 17 that claim 1 introduces an advantage with reference to [0009] of the specification, examiner point out that applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made.

Throughout applicant's remarks as apparent from the responses provide to said remarks above, applicant uses alleged features in claim 1 for argument by using features which are not claimed OR uses feature from the specification which do not appear as claimed and therefore applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how *the language of the claims* patentably distinguishes them from the references.

In response to applicant's remarks on page 17, wherein applicant argues "the vibratory feeders according to Sleep to which reference is made serve the purpose of ensuring that when the type of tablets in a filler are to be changed, all old tablets are removed from the filler", examiner would point out that examiner broadly interprets said change and removal of tablets as spreading of the tablets as claimed by applicant.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Rahmjoo whose telephone number is 571-272-7789. The examiner can normally be reached on 8 AM- 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matt Bella can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mike Rahmjoo
October 25, 2009

/Anand Bhatnagar/
Primary Examiner, Art Unit 2624
October 29, 2009